

# Guidance to County Agricultural Commissions About Keeping Complaints Confidential

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**Enclosure to Enforcement Letter**

Enforcement Letter ENF 04-27

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**Background**

County agricultural commissioners (CACs) occasionally receive complaints from employees or persons who wish to keep their identity confidential.

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**Consult with your county counsel**

CACs should consult with their county counsel for legal advice.

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**The Department of Pesticide Regulation's position**

The Department of Pesticide Regulation (DPR) would like to provide you with its position concerning the ability of a CAC to maintain the confidentiality of a complainant under the provisions of the Public Records Act (PRA) Government Code section 6252, et seq.

It is DPR's view that under the balancing test required by the catchall exemption of the PRA, the public interest served by keeping the identity of a complainant from disclosure far outweighs the public's interest in such disclosure. This position is supported by case law in California.

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### Applicable case law protects complainant's privacy rights

Citing a number of courts in different jurisdictions that were called upon to apply similar provisions of both state and federal public record statutes, the court in *City of San Jose v. The Superior Court* (1999), 74 Cal.App 4th 1008, found that the public interest served by protecting the privacy rights of those who complain to their government clearly outweighs the public interest served by disclosure of their identity. Absent the ability to maintain the confidentiality of such complainants, the court noted that there would be a chilling effect, discouraging such complaints and inhibiting enforcement. Nor is there any need to prove the chilling effect, as it can be inferred on the basis of human experience. The California case cited above involved protecting the identity of those who complained to the city about airport noise.

Complainants protected in other cases relied upon in this decision include those who filed complaints with:

- The Federal Aviation Agency about a pilot.
- A state's human rights division.
- The National Highway Traffic Safety Administration about auto safety.

The same rationale used to protect the complainants in each of these cases is clearly applicable to the pesticide enforcement setting.

Other local agencies also follow this rule. For example, a South Coast Air Quality Management District policy strictly prohibits the release of any information that would identify a complainant without their consent.

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### This may represent a change in previous guidance

This guidance supersedes previous DPR guidance **specific to keeping the identity of complainants confidential**. It is possible that in past individual cases, there may have been other facts or circumstances that may have caused DPR staff to provide different guidance. You now have DPR's most recent general legal guidance in this matter, but as mentioned previously, you should consult with your county counsel to make sure this guidance is acceptable to him or her.

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### Suggested procedures

There are several simple procedures that can be followed to protect the confidentiality of an individual who requests it:

- Do not include the name of the complainant requesting confidentiality in any investigative report.
  - If reference to the complaint is necessary to the narrative, it can just be stated that, “a complaint was received.”
  - If necessary, an interview of the complainant can be included in the report without referencing the fact that he/she was the initial complainant.
  - If the case against the violator can be made without the testimony of the complainant, there is no need to release any information concerning the complaint or the identity of the complainant to the respondent before the hearing.
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### Government Code section 6255

Government Code section 6255, requires agencies to justify withholding any record by showing the record in question is exempt, or by making a determination that the facts of the particular case show the public interest served by not disclosing the record clearly outweighs the public interest served by disclosure of the record. In addition, when the PRA request is in writing, and the agency decides to deny the request, in whole or in part, the agency must respond to the requestor in writing.

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### A sample letter is provided for your convenience, but it is only appropriate for specific situations

There may be occasions when a PRA request to a CAC calls for documents that might divulge the identity of a complainant. The following sample letter may be used when the **reason** for withholding a specific document called for by a PRA request is that its release might divulge the identity of a complainant.

This sample letter response is not appropriate if you receive a “subpoena for records,” “subpoena duces tecum,” or other compulsory legal process demanded by a competent court. In those cases, you should immediately inform your county counsel.

You should send a copy of this sample letter, or whatever form letter you develop for this purpose, to your county counsel to review before sending to records requestors.

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**Sample letter**

*[Your county letterhead]*

*[Date]*

Dear *[requestor]*:

This is in response to your recent request for documents under the provisions of the Public Records Act Government Code section 6252, et seq.

The document(s) that you have requested *[describe request]* *[are enclosed/will be made available for your inspection and copying.]* *[Please call this office to make the appropriate arrangements for inspection and copying.]*

There are certain documents covered by your request that have been withheld under Government Code section 6255, as the public interest served by not disclosing those document(s) outweighs the public interest served by such disclosure.

Please contact me if you have any questions.

*[Commissioner signature block]*

*[Optional courtesy copy: county counsel]*

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**Reference**

Government Code section 6252, et seq.

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**Questions**

Contact your Enforcement Branch Liaison if you have any questions.

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